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OFFICE OF PETITIONS

In re Application of :
Park et al. : DECISION ON PETITION
Application No. 10/023,259 :
Filed: December 14, 2001 :
Atty Docket No. BVTP-P01-590 :

This is a decision on the PETITION TO WITHDRAW HOLDING OF
ABANDONMENT UNDER 37 CFR 1.181(a) filed October 24, 2007.

The petition under § 1.181 is **GRANTED**.

By Notice of Abandonment mailed October 9, 2007, applicants were advised that the above-identified application became abandoned for failure to file a proper reply to the Office action mailed May 13, 2004. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No response was considered received in the Office.

In response, applicants promptly filed the instant petition. Applicants petition for withdrawal of the holding of abandonment on the ground that a Notice of Appeal and a Petition for Extension of Time were timely filed by Express Mail Procedure as specified in 37 CFR §1.10.

A review of the application record reveals that withdrawal of the holding of abandonment is warranted. By decision mailed August 2, 2005, the Director of the Technology Center withdrew an earlier Notice of Abandonment issued December 15, 2004. In that decision, it was concluded that the holding of abandonment was not warranted as a Notice of Appeal (with extension of time) was timely filed on Monday, November 15, 2004 in response to the

Office action mailed May 13, 2004. The TC Director's decision made a determination that the abandonment for failure to file a proper reply to the Office action mailed May 13, 2004 was not warranted.

However, the decision forwarded the application to the examiner for appropriate action. No further action was taken. On June 23, 2006, applicants filed a status inquiry. No response to the status inquiry was mailed by the Office. Next, on October 9, 2007, the Notice of Abandonment was mailed.

The appropriate action on the part of the examiner was to await the filing of an appeal brief. When an application is revived after abandonment for failure on the part of the appellant to take appropriate action after final rejection (or the abandonment is withdrawn), and the petition to revive was accompanied by a notice of appeal, appellant has 2 months, from the mailing date of the Director's affirmative decision on the petition, in which to file the appeal brief. The time period for filing the appeal brief may be extended under 37 CFR 1.136. Accordingly, in the future, petitioner should be mindful that pursuant to this section of the MPEP, a favorable decision may be construed as setting a period for filing an Appeal Brief, and take action accordingly.

In this instance, the period should have been set in the Director's decision. The MPEP also states:

When a notice of appeal is the reply filed pursuant to 37 CFR 1.137(a)(1) or 1.137(b)(1); the time period under 37 CFR 41.37 for filing the appeal brief will be set by the Director of the USPTO in the decision granting the petition.

Likewise, when a decision granting a petition to withdraw the holding of abandonment on the basis that a Notice of Appeal that was not received¹ should be considered timely filed, the time period under 37 CFR 41.37 for filing the appeal brief will be set by the Director of the USPTO in the decision granting the

¹ It is noted that if the Notice of Appeal was received by the Office, i.e., applicants have prima facie evidence in the form of an itemized and date-stamped postcard that the Notice of Appeal was received on a certain date, then the time period under 37 CFR 41.37 is set based on the actual date of receipt of the Notice of Appeal in the Office.

petition. In this instance, no 2-month period was set in the decision mailed August 2, 2005.

In view thereof, the Notice of Abandonment mailed October 9, 2007 and the holding of abandonment are hereby withdrawn.

No fee is required on petition under § 1.181.

Please be advised that the two-month period for filing an appeal brief (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the mail date of this decision.

Technology Center AU 3767 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment, if necessary, to process the Notice of Appeal filed November 15, 2004 (and resubmitted on petition filed January 10, 2005), and for the examiner to await filing of applicant's Appeal Brief.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read 'Nancy Johnson', is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions